

## Policy Paper on lowest-price award

### Background

According to Directive 2004/18/EC, the award of public service contracts should be based on:

- the most economically advantageous tender, whereby technical and financial proposals are considered and award is made to the proposal that presents the highest value for money, or
- the lowest price, whereby only a financial proposal is considered.

In European countries the criterion of the most economically advantageous tender is usually applied for the award of consulting services<sup>1</sup>. However, some contracting authorities, mostly (but not only) in the new EU member states, apply the lowest price criterion for the award of such services; the main reasons put forward are:

- the subjectivity in the evaluation of technical proposals, and
- savings in the cost of consulting contracts.

From the information available it appears that, in cases where the award is based on lowest price, the result was that the proposed prices decreased considerably but this in turn adversely affected the quality of the services, with implications in the later stages of the projects and – in some cases in new EU member states - instructions from auditors to return the financial contribution of the European Union.

### EFCA's concerns and opinions

EFCA believes that the selection of consultants on lowest price invariably leads to a lower quality of work, the main reason being that the quality of engineering consultancy services – as that of any intellectual service – depends mainly on:

- the identification of the most appropriate solutions for each situation, taking sustainability and life-cycle costs into account, and
- the level of detail with which the work is carried out

which are not readily controllable upon delivery.

The lower quality of consulting services – whether concerning project design, construction supervision or project management – will thus invariably result in a higher construction and/or operational costs, i.e. higher project life-cycle costs. Bearing in mind that the cost of consultancy services is a small fraction of the overall construction and

---

<sup>1</sup> consulting services include design of public works, supervision of construction, project management etc.

operation cost of the project, it becomes apparent that the award of consultancy services on the basis of lowest cost leads to increased overall project costs.

In recognition of the above, it is interesting to note that, for federal consulting contracts in the U.S.<sup>2</sup> as well as for consulting contracts of several States in the U.S. and the Province of Quebec in Canada, *Quality Based Selection (QBS)* is being recently applied by law, whereby the contract scope and price are negotiated (only) with the most qualified candidate; although this procedure is not consistent with the European Directives, the shift in emphasis on quality over cost is significant<sup>3</sup>.

Moreover, EFCA is concerned that award of project design on lowest cost will stifle innovation – an essential element for the advancement of the profession in Europe, especially in these times of increased competition from the East.

The evaluation of technical proposals does indeed include a degree of subjectivity; however extensive international experience to date suggests this can be minimised by specifying specific criteria and sub-criteria for their evaluation in the tender invitation. EFCA believes that, in any event, the difficulties in the evaluation process do not in any way justify basing the award procedure on price only.

### **EFCA's proposals to Member Associations and Clients**

1. In view of the negative effects stated above, use of the lowest price only award method for consulting engineering services is neither in the public interest nor in the interest of Clients. Consulting engineering services of the necessary quality can only be obtained for appropriate remuneration in line with market prices, which can only be ensured by using the most economically advantageous award criterion, in which the proposal with the best value for money is selected.

2. Thus, in order to ensure the appropriate quality of services EFCA proposes that:

- consultants should be selected on the basis of their qualifications, in order to ensure that competition in the award stage is held between consulting firms of comparable experience, and
- the *most economically advantageous tender* is used for the award of consulting services.

3. For the effective award on the basis of the economically most advantageous tender, the following provisions should apply:

- it should be based on the assessment of technical and financial proposals, with the weight of the latter not more than 20%;
- the technical and financial proposals should be submitted in separate envelopes;
- the criteria for assessment of the technical and financial proposals and their weights

---

<sup>2</sup> The Brooks Act, which is a U.S. federal law passed in 1972 that requires that the U.S. Federal Government select engineering and architecture firms based upon their competency, qualifications and experience rather than by price.

<sup>3</sup> While the industry average on increase of project cost during construction (defined by the value of the cost of change orders as a percentage of the final construction cost) is approximately 10 percent, QBS projects are 3 percent. and while the national average in construction delays for conventional projects is about 10 percent, QBS projects have an average delay of 8.7 percent, with 60 percent of those projects experiencing schedule growth of less than 3 percent [Source: An Analysis of Issues Pertaining to Qualifications-Based Selection, Paul S. Chinowsky, PhD University of Colorado, Boulder, CO Gordon A. Kingsley, PhD Georgia Institute of Technology, Atlanta, GA]

should be clearly defined in the invitation as stated in the Directive 2004/18/EC and in jurisprudence of the European Court of Justice;

- technical scores should be justified on the basis of the above criteria;
- the financial proposals are opened after completion of the technical assessment; only the financial proposals of candidates having a technical score above the predefined threshold level (e.g. 70%) are opened;
- the financial proposals should be evaluated in a fair and transparent way.

4. In this context, EFCA proposes to include the project budget and scope of services in every call for tenders of Consulting/Engineering services for all candidates to interpret the Clients' needs in a comparable manner. In case the Call for Tenders contains an excessively low budget, i.e. a budget based on an insufficient allocation of resources and/or based on rates clearly below market prices, professional organisations (like the Engineering Chamber or a Member Association of EFCA) should be allowed to officially complain and initiate legal procedures against the Client<sup>4</sup>.

5. It should be pointed out that, in accordance with Directive 2004/18/EC, the Member States have the right to define the remuneration of consulting services in their legislation<sup>5</sup>. 6. In this context, Member Associations could consider to analyse fee structures in their countries in the form of:

- salary levels to employees depending on field and experience, overhead costs and (reasonable) profit; such fee structures could also be of use when excessively low financial proposals are being assessed or
- fees for different types and sizes of projects, e.g. fee for design of highways as a function of class and length; such fee structures could also be of use to define appropriate project budgets.

*October 2010*

---

<sup>4</sup> Directive 2004/18/EC, Article 55 – Abnormally low tenders

<sup>5</sup> Directive 2004/18/EC, preamble (47) and Article 53